



**1. FORMATION OF CONTRACT.** This proposed purchase contract, which incorporates by reference these General Provisions and all other terms and conditions set forth in this proposed purchase contract (collectively, the "Contract"), is Buyer's offer to purchase the goods and/or services (collectively, the "Goods") described in this is strictly limited to the terms and conditions in this offer. Unless specifically agreed to in writing by Buyer's Authorized Procurement Representative, Buyer objects to, and is not bound by, any term or condition that differs from or adds to this offer. Seller's commencement of performance or acceptance of this offer in any manner shall conclusively evidence acceptance of this offer as written. Seller's provision of the Goods shall be governed solely by this Contract. The Goods supplied hereunder are unique as that term is used under Article 2-716 of the Uniform Commercial Code. Buyer and Seller are referred to herein as a "Party" or collectively as the "Parties."

## 2. SCHEDULE

- a. Seller shall strictly adhere to the shipment or delivery schedules specified in this Contract. In the event of any anticipated or actual delay, including but limited to delays attributed to labor disputes, Seller shall: (i) promptly notify Buyer in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Buyer with a written recovery schedule; and (iii) if requested by Buyer, ship via air or other expedited routing, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.
- b. Seller shall not deliver Goods prior to the scheduled delivery dates unless authorized in writing by Buyer's Authorized Procurement Representative.

## 3. PACKING AND SHIPPING

- a. Seller shall pack the Goods to prevent damage and deterioration.
- b. If the Contract specifies FOB destination (place of delivery), then in addition to any other shipping instructions, Seller shall forward Goods freight prepaid. Seller shall make the transportation arrangements, pay the shipping costs, and remain responsible for the Goods until the Goods are delivered and the Buyer takes possession at the destination.
- c. If the Contract specifies FOB origin (place of shipment), then in addition to any other shipping instructions, Seller shall forward Goods collect. For Goods shipped within the United States, Seller shall make no declaration concerning the value of the Goods shipped except on Goods where the tariff rating is dependent upon released or declared value. In such event, Seller shall release or declare such value at the maximum value within the lowest rating. Buyer may charge Seller for damage to or deterioration of any Goods resulting from improper packing or packaging.
- d. Seller shall include an itemized packing list bearing the Buyer Purchase Order number, Buyer Purchase Order Line Number, Seller part number, description of the items shipped, and any other information called for in the Order. A copy of the packing list shall be placed in the shipping package. Invoices shall be submitted to the address shown on the face of the Order to the attention of the Accounts Payable Department. The invoice must contain the same Purchase Order number, Purchase Order Line Number, description of Goods/Services, quantity, and price as the Purchase Order

**4. QUALITY CONTROL.** Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased under this Contract. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control system and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such violation or deviation.

**5. RIGHTS OF BUYER'S CUSTOMERS AND REGULATORS TO PERFORM INSPECTION, SURVEILLANCE AND TESTING.** Buyer's rights to perform inspections, surveillance and tests and to review procedures, practices, processes and related documents related to quality assurance, quality control, flight safety and configuration control shall extend to the customers of Buyer that are departments, agencies or instrumentalities of the United States Government. Buyer may also, at Buyer's option, by prior written notice from Buyer's Authorized Procurement Representative, extend such rights to other customers of Buyer and to agencies or instrumentalities of foreign governments. Seller shall cooperate with any such inspection, surveillance, test or review. Nothing in this Contract shall be interpreted to limit United States Government access to Seller's facilities pursuant to law or regulation.

**6. SELLER NOTICE OF DISCREPANCIES.** Seller shall immediately notify Buyer in writing when discrepancies in Seller's process or Goods are discovered or suspected regarding Goods delivered or to be delivered under this Contract.

**7. INSPECTION OF SUPPLIES.** (Applicable only if goods will be delivered.) FAR 52.246-3 (May 2001), "Inspection of Supplies - Cost Reimbursement," is incorporated by reference. "Supplies" includes Goods, "Contractor" means Seller, and "Government" means Buyer, except in paragraph (k). Paragraph (k) is removed and replaced with the following: "(k) Except as otherwise specified in the Contract, the Seller's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government-owned property. The Seller's obligation to correct or replace Buyer-furnished property shall be governed by the clause pertaining to Buyer's property." In paragraph (f) "6 months" is revised to read "12 months."

**8. INSPECTION OF SERVICES.** (Applicable only if services will be provided.) FAR 52.246-5 (Apr 1984), "Inspection of Services - Cost-Reimbursement," is incorporated by reference. "Contractor" means Seller and "Government" means Buyer.

**9. WARRANTY**

a. In addition to any other warranty provided under this Contract, Seller warrants that:

- i. It shall not furnish "Counterfeit Goods" under this Contract, defined as Goods or separately-identifiable items or components of Goods that: (1) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (2) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (3) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (4) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; or (5) have not passed successfully all OEM required testing, verification screening, and quality control processes. Counterfeit Goods shall be deemed non-conforming to this Contract.
- ii. Any hardware, software and firmware Goods delivered under this Contract:
  - (1) shall not contain any viruses, malicious code, trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware;
  - (2) shall not contain any third-party software (including software that may be considered free software or open source software) that: (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer; or (b) may require distribution, copying or modification of any software free of charge;
  - (3) shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party;
  - (4) shall be free from any liens or encumbrances; and
  - (5) shall be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges data with it.

b. This warranty shall survive inspection, test and acceptance of, and payment for, the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin upon Buyer's final acceptance of the Goods. Buyer may, at its option, either: (i) require prompt correction or replacement of the defective or non-conforming Goods, or (ii) return the Goods for credit or refund. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's expense. Goods required to be corrected or replaced shall be subject to this article and the "Inspection of Supplies" article of this Contract in the same manner and to the same extent as Goods originally delivered under this Contract, but only as to the corrected or replaced part or parts thereof. Even if the Parties disagree about the existence of a breach of this warranty, Seller shall promptly comply with Buyer's direction to: (i) repair, rework or replace the Goods, or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance. If the Parties later determine that Seller did not breach this warranty, the Parties shall equitably adjust the Contract price.

**10. LIMITATION OF COST.** (Applicable if this Contract is fully funded.) FAR 52.232-20 (Apr 1984), "Limitation of Cost," is incorporated by reference. "Schedule" means this Contract, "Contractor" means Seller, "Government" means Buyer, and "Contracting Officer" means Buyer's Authorized Procurement Representative. The word "exclusive" in the first sentence of paragraph (a) is revised to "inclusive" and paragraph (d)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of (i) the estimated cost and fee specified in the Contract or, (ii) if this is a cost-sharing contract, the estimated cost to Buyer specified in the Contract.

**11. LIMITATION OF FUNDS.** (Applicable if this contract is incrementally funded) FAR 52.232.22 (Apr 1984), Limitation of Funds," is incorporated by reference. "Schedule" means this Contract, "Contractor" means Seller, "Government" means Buyer, and "Contracting Officer" means Buyer's Authorized Procurement Representative. The word "exclusive" in the second sentence of paragraph (b) is revised to "inclusive" and subparagraph (f)(1) is revised to read: "(1) Buyer is not obliged to reimburse Seller for costs incurred and fee in excess of the total amount allotted by Buyer to this Contract; and"

**12. TAXES.** Unless this Contract specifies otherwise, the price of this Contract includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Contract except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption.

### **13. INVOICE AND PAYMENT**

- a. Except as provided in this article, payment will be made in accordance with the following clauses of the Federal Acquisition Regulations ("FAR"), which are incorporated by reference. In each of the following clauses "Contractor" means Seller, "Contracting Officer" means Buyer's Authorized Procurement Representative, "Government" means Buyer, and "Disputes Clause" means the Disputes article of this Contract.
- (i) FAR 52.216-7 (Dec 2002), "Allowable Cost and Payment," except that for purposes of final indirect cost rate determinations in paragraph (d), the terms "cognizant Federal Agency official" and "appropriate Government representative" maintain their original meaning, subparagraphs (a)(2), (b)(4), and (d)(4) are deleted, paragraph (f) is deleted, in subparagraph (h)(2)(ii)(B) the term "6 years" is deleted and replaced with the term "5 years 9 months," and the blank in paragraph (a)(3) is filled-in with the word "30th," unless otherwise specified in the Contract.
  - (ii) FAR 52.216-8 (Mar 1997), "Fixed Fee," if this is a cost-plus-fixed fee contract.
  - (iii) FAR 52.216-10 (Mar 1997), "Incentive Fee," if this is a cost-plus-incentive fee contract. The values to fill-in the blanks in subparagraph (e)(1) are set forth elsewhere in this Contract.
- b. Each invoice shall include Buyer's Contract number. Buyer may take any offered discount. Payment due date, including discount periods, shall be computed from the date of receipt of a correct invoice.
- c. Payment shall be deemed to have been made on the date Buyer's check is mailed or payment is otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller. Except for amounts invoiced under article 18, Seller shall be deemed to have waived all charges and fees that are not invoiced within ninety (90) calendar days after the end of the calendar year in which the charges were incurred.

### **14. CHANGES**

- a. Buyer's Authorized Procurement Representative may, without notice to sureties and in writing, direct changes within the general scope of this Contract in any of the following: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Buyer-furnished property; (vi) terms and conditions of this Contract required to meet Buyer's obligations under Government prime contracts or subcontracts; and, if this Contract includes services, (vii) description of services to be performed; (viii) time of performance (e.g., hours of the day, days of the week, etc.); and (ix) place of performance. Seller shall comply promptly with such direction. Except for the rights granted to Buyer under this article, a change pursuant to this article shall not give rise to nor authorize any other modification of or amendment to the terms and conditions of this Contract.
- b. If such change increases or decreases the cost or time required to perform this Contract, the Parties shall negotiate an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Buyer shall modify this Contract in writing accordingly. Unless otherwise agreed in writing, Seller must assert any claim for adjustment to Buyer's Authorized Procurement Representative in writing within 25 days, and deliver a fully supported proposal to Buyer's Authorized Procurement Representative within 60 days, after Seller's receipt of such direction. Buyer may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Buyer may direct the disposition of the property. Seller shall provide Buyer supporting data in sufficient detail for Buyer to verify the amount of Seller's claim. Failure of the Parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Buyer's direction.
- c. If Seller considers that Buyer's conduct constitutes a change, Seller shall notify Buyer's Authorized Procurement Representative immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's Authorized Procurement Representative, Seller shall take no action to implement any such change.
- d. Notwithstanding the foregoing provisions of this article, the estimated or target cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance thereof shall not be increased or deemed to be increased except by specific written modification of this Contract indicating the new Contract estimated cost and

the new amount allotted to this Contract. Until such modification is made, Seller shall not be obligated to continue performance or incur costs beyond the point established in the "Limitation of Cost" and "Limitation of Funds" articles of this Contract.

**15. DISPUTES.** Any dispute that arises under or is related to this Contract that cannot be settled by mutual agreement of the Parties may be decided by a court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this Contract according to Buyer's instructions so long as Buyer continues to pay amounts not in dispute.

**16. FINANCIAL RECORDS AND AUDIT.** Seller shall retain all financial records and documents pertaining to the Goods for a period of no less than three years after final payment. Such records and documents shall date back to the time this Contract was issued and shall include without limitation, catalogs, price lists, invoices, underlying data and basis for cost estimates, and inventory records. Buyer shall have the right to examine, reproduce and audit all Seller's records related to pricing, incurred costs and proposed costs associated with any proposals (prior to or after contract award), invoices or claims.

**17. FORCE MAJEURE.** Seller shall not be liable for excess re-procurement costs pursuant to the "Termination/Cancellation" article of this Contract, incurred by Buyer because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of Seller. Examples of these causes are: (a) acts of God or of the public enemy; (b) acts of the Government in either its sovereign or contractual capacity; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; and (i) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of Seller. If the Seller's failure is caused by the failure of a subcontractor of Seller and if such failure arises out of causes beyond the reasonable control of both, and if such delay is without the fault or negligence of either, Seller shall not be liable for excess re-procurement costs unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedules. Seller shall notify Buyer in writing within ten (10) days after the beginning of any such cause(s). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the Goods from other sources; otherwise Seller shall be liable for excess re-procurement costs.

**18. TERMINATION/CANCELLATION**

a. FAR 52.249-6 Termination (Cost Reimbursement) (May 2004) is incorporated by reference, except that the term "Government" means "Buyer," "Contracting Officer" means "Buyer's Authorized Procurement Representative," the phrase "1 year" is deleted each place it occurs and replaced by the term "six months," paragraphs (e) and (j) are deleted, subparagraph (a)(2) is deleted in its entirety and replaced with the following:

"(2) Buyer may cancel the whole or any part of this Contract in the event of:

- (i) Seller's default ("default" includes failure to make progress in the work so as to endanger performance) of any or all of the requirements of this Contract and within ten (10) days after receipt of notice from Buyer specifying the failure does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or
- (ii) in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business or any assignment, reorganization or arrangement by Seller for the benefit of creditors."

Subparagraph (b) is deleted in its entirety and replaced with the following:

"(b) Buyer's Authorized Procurement Representative shall terminate or cancel the Contract in accordance with paragraph (a) of this 52.249-6 clause by delivering to Seller a Notice of Termination or Notice of Cancellation specifying whether termination or cancellation is pursuant to subparagraphs (a)(1) or (a)(2), the extent of the termination or cancellation, and the effective date. If, after cancellation under subparagraph (a)(2)(i), it is determined that Seller was not in default or that Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of Seller as set forth in the Force Majeure clause, the rights and obligations of the Parties will be the same as if the termination was for the convenience of the Government." and subparagraph (h)(4) is deleted in its entirety and replaced with the following:

"(4) A portion of the fee payable under the Contract, determined as follows:

- (i) If the Contract is terminated under subparagraph (a)(1) of this 52.249-6 clause, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Contract, but

- excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
- (ii) If the Contract is cancelled under subparagraph (a)(2) of this 52.249-6 clause, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the Contract."

**19. ASSIGNMENT, DELEGATION AND SUBCONTRACTING.** Seller shall not assign (whether voluntary, involuntary, by merger, change of control, consolidation, dissolution, operation of law, transfer, or any other manner) any of its rights or interest in this Contract or subcontract for all or substantially all of its performance of this Contract without Buyer's prior written consent. Seller shall not delegate any of its duties or obligations under this Contract. Seller may assign its right to monies due or to become due. Any attempt to assign or delegate in violation of this article is void. No assignment, delegation or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under this Contract or prejudice any of Buyer's rights against Seller whether arising before or after the date of any assignment. This article does not limit Seller's ability to purchase standard commercial supplies or raw materials.

**20. PUBLICITY.** Without Buyer's prior written approval, Seller shall not, and Seller's subcontractors at any tier shall not, release any publicity, advertisement, news release or denial or confirmation of same regarding this Contract or the Goods, or program to which it pertains. Seller shall be responsible and liable to Buyer for any breach of such obligation by any subcontractor. Seller shall incorporate a similar provision in all subcontracts under this Contract.

**21. BUYER'S PROPERTY.** Seller shall clearly mark, maintain an inventory of, and keep segregated or identifiable all of Buyer's property and all property to which Buyer acquires an interest by virtue of this Contract. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss. Seller shall not use such property other than in performance of this Contract without Buyer's prior written consent. Seller shall notify Buyer's Authorized Procurement Representative if Buyer's property is lost, damaged or destroyed. As directed by Buyer upon completion, termination or cancellation of this Contract, Seller shall deliver such property, to the extent not incorporated in delivered end Goods, to Buyer in good condition subject to ordinary wear and tear and normal manufacturing losses. Nothing in this article limits Seller's use, in its direct contracts with the Government, of property in which the Government has an interest.

**22. RESERVED.**

**23. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY.** Seller will indemnify, defend and hold harmless Buyer and its customer from all claims, suits, actions, awards (including, but not limited to, awards based on intentional infringement of patents known at the time of such infringement, which awards may exceed actual damages and may include attorneys' fees and/or costs), liabilities, damages, costs and attorneys' fees related to the actual or alleged infringement of any United States or foreign intellectual property right (including, but not limited to, any right in a patent, copyright, industrial design or semiconductor mask work, or based on misappropriation or wrongful use of information or documents) and arising out of the manufacture, sale or use of goods by either Buyer or its customer. Buyer and/or its customer will duly notify Seller of any such claim, suit or action. Seller will, at its own expense, fully defend such claim, suit or action on behalf of Buyer and its customer. Seller will have no obligation under this article with regard to any infringement arising from (a) the compliance of Seller's new product design with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications or (b) use or sale of goods in combination with other items when such infringement would not have occurred from the use or sale of those goods solely for the purpose for which they were designed or sold by Seller. For purposes of this article only, the term Buyer will include The Boeing Company and all Boeing subsidiaries and all officers, agents and employees of Boeing or any Boeing subsidiary. To the extent that Buyer is not liable for infringement or indemnity through the operation of an Authorization and Consent clause, Seller shall not be liable to Buyer to that same extent.

**24. CONFIDENTIAL, PROPRIETARY, AND TRADE SECRET INFORMATION AND ITEMS**

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure all (i) confidential, proprietary and/or trade secret information; (ii) tangible items and software containing, conveying or embodying such information; and (iii) tooling identified as being subject to this article that is obtained, directly or indirectly, from the other in connection with this Contract or other agreement referencing this Contract, including Buyer's contract with its customer, if any, (collectively referred to as "Proprietary Information and Materials"). Buyer and Seller shall each use and/or disclose Proprietary Information and Materials of the other only in the performance of and for the purpose of this Contract and/or any other agreement referencing this Contract including Buyer's contract with its customer, if any. However, despite any other obligations or restrictions imposed by this article, Buyer shall have

the right to use, disclose and reproduce Seller's Proprietary Information and Materials, and make derivative works thereof, to fulfill Buyer's obligations under contract and for the purposes of testing, certification, use, sale or support of any Goods delivered under this Contract or any other agreement referencing this Contract including Buyer's contract with its customer, if any. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Buyer's Proprietary Information and Materials.

- b. Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Contract, Seller shall return to Buyer all of Buyer's Proprietary Information and Materials and all materials derived there from, unless specifically directed otherwise in writing by Buyer. Seller shall not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any Goods, parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Buyer. Prior to disposing of such Goods, parts or other materials as scrap, Seller shall render them unusable. Buyer shall have the right to audit Seller's compliance with this article.
- c. Seller may disclose Proprietary Information and Materials of Buyer to its subcontractors as required for the performance of this Contract, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article. Seller shall be liable to Buyer for any breach of such obligations by such subcontractor.
- d. The provisions of this article are effective notwithstanding the application of any restrictive legends or notices to Proprietary Information and Materials. The provisions of this article shall survive the completion, termination or cancellation of this Contract.

**25. GRATUITIES.** Seller warrants that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

**26. OFFSET CREDITS**

- a. To the exclusion of all others, Buyer or its assignees shall be entitled to all industrial benefits or offset credits that might result from this Contract. Seller shall provide documentation or information that Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.
- b. Seller agrees to use reasonable efforts to identify the foreign content of goods or services that Seller either produces itself and/or procures from subcontractors for work directly related to this Contract. Promptly after selection of a non-U.S. subcontractor for work under this Contract, Seller shall notify Buyer of the name, address, subcontract point of contact (including telephone number) and dollar value of the subcontract.

**27. UTILIZATION OF SMALL BUSINESS CONCERNS.** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this Contract.

**28. RIGHTS AND REMEDIES.** Any failures, delays or forbearances of either Party in insisting upon or enforcing any provisions of this Contract, or in exercising any rights or remedies under this Contract, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect. Except as otherwise limited in this Contract, the rights and remedies set forth herein are cumulative and in addition to any other rights or remedies that the Parties may have at law or in equity. If any provision of this Contract is or becomes void or unenforceable by law, the remainder shall be valid and enforceable. Seller acknowledges and agrees that money damages would not be an adequate remedy for any actual, anticipatory or threatened breach of this Contract by Seller with respect to its delivery of the Goods to Buyer.

**29. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable statutes and government rules, regulations and orders, including those pertaining to United States Export Controls. In particular, Seller shall (i) comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention") or other anti-corruption/anti-bribery convention; (ii) comply with the requirements of the Foreign Corrupt Practices Act, as amended, ("FCPA") (15 U.S.C. §§78dd-1, *et seq.*) regardless of whether Seller is within the jurisdiction of the United States; and (iii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Boeing to a non-U.S. public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.

**30. GOVERNING LAW.** This Contract and any disputes arising out of, or relating to, this Contract shall be governed by the laws of the State of Delaware, without regard to the conflict of law rules thereof, provided that (i) contract provisions that have been incorporated directly from or by express reference to the FAR or FAR supplements, (ii) contract provisions that have been flowed down from a contract with the U.S. Government and (iii) the Changes article and the Termination/Cancellation article (excluding subparagraph (a)(2)), shall be construed and interpreted according to the federal common law of government contracts as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the federal government. This Contract excludes the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

**31. GOVERNMENT CLAUSES.** Government clauses applicable to this Contract are incorporated herein either by attachment to this document or by some other means of reference.

**32. RESERVED.**

**33. ACCESS TO PLANTS AND PROPERTIES.** Seller shall comply with all the rules and regulations established by Buyer or Buyer's customer for access to and activities in and around premises controlled by Buyer or Buyer's customer.

**34. RESERVED.**

**35. SELLER FINANCIAL REVIEW**

- a. If the Contract, in the aggregate, exceeds \$250,000 and extends for more than one year, or if requested, the Seller shall provide financial data as specified below, on a quarterly basis or as requested to the Buyer's Corporate Credit Office for credit and financial condition reviews. If Seller itself is publicly traded (not a subsidiary of a publicly traded company) and is required to file reports with the Securities and Exchange Commission ("SEC"), Buyer's Corporate Credit Office shall obtain Seller financial data from information made available to the general public via 10-K and 10-Q reporting requirements. In the event that Seller does not submit financial statements to the SEC or is no longer required to do so during the term of this Contract, Seller shall provide financial data on a quarterly basis to Buyer's Corporate Credit Office. Such financial data shall include, but is not limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within seventy-two (72) hours of any written request by Buyer's Corporate Credit Office. All such information shall be treated as confidential.
- b. This provision shall not apply if Seller is a nonprofit education or research institution associated with state or provincial universities, an agency of the United States government or of state governments, an entity that is at least fifty percent (50%) directly owned by Buyer, or an individual providing Goods when the individual is the sole employee (inclusive of subcontractors) of the Seller.

**36. PERFORMANCE & FEE.** Notwithstanding any other provision herein, to the extent Seller's performance is the direct and proximate cause of Buyer losing some or all of Buyer's fee that it would have otherwise earned under its prime contract, Seller shall be liable to Buyer for the amount of such lost fee ("Lost Fee"). Prior to Buyer taking action to recover such Lost Fee, Buyer shall provide written notice to Seller. Such notice shall set forth the basis for Buyer's assertion that Seller was responsible for the Lost Fee. Upon receipt of such notice, Seller shall have fifteen (15) business days to provide Buyer with a written response. Buyer shall then have an additional fifteen (15) business days to evaluate and consider Seller's response. In the event that the Parties fail to reach agreement based on the foregoing procedure, the Parties shall escalate the Lost Fee dispute to their respective management designees who shall have an additional thirty (30) days to confer to resolve the dispute. If, after such additional time, the Parties cannot resolve the Lost Fee dispute, either Party may seek relief from a court of competent jurisdiction. If Seller and Buyer reach agreement of the amount of Seller's liability for Buyer's Lost Fee, Buyer may debit such amount against amounts owing to Seller under this Contract or other contracts between the Parties.

**37. CODE OF BASIC WORKING CONDITIONS AND HUMAN RIGHTS.** Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights in its worldwide operations. In furtherance of this commitment, Buyer has adopted a Code of Basic Working Conditions and Human Rights setting out in detail the measures it takes to ensure this commitment is fulfilled. The Boeing Code may be downloaded at <http://www.boeing.com/aboutus/culture/code.html>. Buyer strongly encourages Seller to adopt and enforce concepts similar to those embodied in the Boeing Code, including conducting Seller's operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, collective bargaining, workplace safety and environmental protection. Seller will promptly cooperate with and assist Buyer in implementation of and adherence to the Boeing Code.

Further, any material violation of law by Seller relating to basic working conditions and human rights in the performance of work under this Contract may be considered a material breach of this Contract for which Buyer may elect to cancel any open orders between Buyer and the Seller, for cause, in accordance with the provision of this order entitled "Cancellation for Default" or exercise any other right of Buyer for an Event of Default under this Contract.

### **38. ELECTRONIC ACCESS**

- a. Definitions. "Boeing Systems" is defined as any electronic information systems operated by or on behalf of Buyer, including without limitation, facilities, network equipment, telecommunications networks, software, files and data. "Electronic Access" is defined as access by Seller or any Seller Personnel to the Boeing Systems using any access or transmission method, including without limitation the internet or private data transmission lines. "Seller Personnel" is defined as any of Seller's employees, contract labor, consultants, advisers, or other representatives who have a need to access the Boeing Systems for Seller to perform under this Contract. "Access Controls" is defined as procedures and/or mechanisms used to authenticate the identity of a system user and authorize access, including, but not limited to, user identifications and passwords, tokens, smart cards and biometrics. "Unauthorized Proprietary Information and Materials" is defined as Proprietary Information and Materials that is not intended for release outside of Boeing, including but not limited to information marked as "Limited," "Limited Distribution," or "Boeing Proprietary - Distribution Limited to Boeing Personnel."
- b. Access Right. Buyer grants to Seller a limited, nontransferable, nonexclusive, revocable (at Buyer's discretion) right to access the Boeing Systems electronically solely during the term of this Contract and solely to the extent authorized in writing by Buyer and necessary for Seller to perform this Contract. Seller shall not access or use the Boeing Systems for any other purpose. This provision does not grant to Seller any ownership interest in, or any express or implied license or right to, any of the Proprietary Information and Materials or to any software or intellectual property rights owned by Buyer or any third party. SELLER EXPRESSLY AGREES THAT BUYER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO RELIABILITY OF THE BOEING SYSTEMS. Seller shall not remove any restrictive legends or markings in the Proprietary Information and Materials or Boeing Systems. To the fullest extent consistent with applicable law, Buyer has the right to monitor, record, retrieve and disclose to others (including, but not limited to, law enforcement officials) all information, including the content of communications, related to any Electronic Access by Seller and Seller Personnel. Without limiting the foregoing, Seller hereby understands and agrees that it has no expectation of privacy in the use of Boeing Information Systems and that such use is at all times and in all circumstances fully subject to the consents, including those to monitoring and disclosure, provided in the Boeing warning banner and applicable written Boeing policy.
- c. Access Requirements. Seller may request, and Buyer may provide in its sole discretion, Electronic Access for Seller Personnel on a "need to know" basis in order for Seller to perform under this Contract. Prior to obtaining Electronic Access, each Seller Personnel will be required to obtain from Buyer an Electronic Access account, including Access Controls, and participate in a security briefing in accordance with Buyer specifications. Seller shall: (i) ensure that all Seller Personnel review and agree in writing to abide by the terms of this provision, and any other applicable provision contained in this Contract, prior to being granted Electronic Access; (ii) maintain complete and accurate records of all Seller Personnel with Electronic Access, and provide such records to Buyer upon request; (iii) assign a single focal to initiate requests for Electronic Access for Seller Personnel, coordinate security briefings, maintain records, and coordinate with Buyer regarding actual or potential security breaches; (iv) take all reasonable precautions to prevent the loss, disclosure, reverse engineering, sharing with unauthorized Seller Personnel or compromise of Access Controls; and (v) be responsible for the acts and omissions of all Seller Personnel with respect to their Electronic Access. Seller shall ensure that Seller Personnel do not access the Boeing Systems through any mechanism other than the Access Controls and acknowledges that the Access Controls are for specific individual use of Seller Personnel only, are not transferable, and shall be maintained in confidence by Seller. Seller shall immediately notify Buyer if it believes that any Access Control has been compromised. Seller shall review (at least every three (3) months) each Seller Personnel's Electronic Access requirements. Upon the reassignment, resignation, or termination of any Seller Personnel with Electronic Access, Seller shall promptly submit a written request to Buyer to terminate such Electronic Access.
- d. Prohibited Use. Seller shall not, unless authorized in writing by Buyer: (i) export or save any Proprietary Information and Materials from the Boeing Systems except in support of the work to be performed under this Contract; (ii) make any derivative uses of the Boeing Systems or the Proprietary Information and Materials except in support of the work to be performed under this Contract; (iii) use any data mining, robots, or similar data gathering and extraction methods; (iv) use any frame or framing techniques to enclose any Proprietary Information and Materials found on the Boeing Systems; (v) through reverse engineering, decompiling, or disassembling any portion of the Access Controls, access or attempt to access any Unauthorized Proprietary Information and Materials or restricted portions of the Boeing Systems.
- e. Export Control. In order to comply with applicable U.S. export control statutes and regulations, Buyer may be required to obtain information concerning citizenship or place of birth of Seller Personnel with Electronic Access. Seller shall provide such information consistent with all applicable local statutes and regulations including those provisions that permit Seller to provide such information when such provision is consented to by Seller Personnel. If

Seller determines that it may submit such information, it shall be certified by an authorized representative of Seller as being true and correct. Seller acknowledges that if it is unable to provide such information and certification, access to certain Boeing Systems may be limited due to Boeing compliance with applicable U.S. export control statutes and regulations. Where access is granted, Seller shall be responsible for obtaining all export licenses required, where applicable, for each Seller Personnel, including to allow such Seller Personnel to perform the work to which he or she is assigned, and Seller shall comply with any additional export control restrictions as required by applicable U.S. export control statutes and regulations.

- f. **Breach and Remedies.** If Seller discovers or is notified of a security breach or potential security breach based on the restrictions contained in this article ("Security Breach"), Seller immediately shall: (i) cease access to any Proprietary Information and Materials that are the subject of the Security Breach and shall not review any Unauthorized Proprietary Information and Materials; (ii) provide notice to Buyer, including notice of the materials involved in the Security Breach, by sending notice to abuse@boeing.com and to the applicable Authorized Procurement Representative for this Contract; and (iii) assist Buyer in investigating, remedying, and taking any other action Buyer deems necessary to address such Security Breach, including related to any dispute, inquiry, or claim related to such Security Breach. Seller agrees to permit Buyer to review its security control procedures and practices via physical or electronic access by Buyer, including access to Seller facilities in which such systems are located, as well as any and all premises where maintenance, storage or backup activities are performed. Any material breach of this article by Seller may be considered a default for which Buyer may suspend Electronic Access and/or cancel this Contract, and any other contracts between Buyer and Seller, in accordance with the "Cancellation for Default" article of this Contract. Further, Seller acknowledges that any attempts by Seller or any Seller Personnel to circumvent any security measures designed to prevent unauthorized access to the Boeing Systems may be subject to criminal or civil penalties under the U.S. Federal Computer Fraud and Abuse Act and other applicable laws and regulations.

**39. ENVIRONMENTAL HEALTH AND SAFETY PERFORMANCE.** Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system ("EMS") appropriate for its business throughout the performance of this Contract. Buyer expects that Seller's EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers.

**40. CLAIMS ADJUSTMENT.** Buyer may at any time deduct or set-off Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of this Contract or other transactions between Buyer and Seller.

**41. INDEMNIFICATION, INSURANCE, PROTECTION OF PROPERTY, AND EVIDENCE OF CITIZENSHIP (Applies when work is performed at an Argon ST site)**

- a. **Indemnification Negligence of Seller or Subcontractor.** Seller shall defend, indemnify and hold harmless The Boeing Company, its subsidiaries, and their directors, officers, employees and agents from and against all actions, causes of action, liabilities, claims, suits, judgments, liens, awards and damages of any kind and nature whatsoever for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof) and expenses, costs of litigation and counsel fees related thereto or incident to establishing the right to indemnification, arising out of or in any way related to this Contract, the performance thereof by Seller or any subcontractor thereof or other third parties, including, without limitation, the provision of Services, personnel, facilities, equipment, support, supervision or review. The foregoing indemnity shall apply only to the extent of the negligence or willful misconduct of Seller, any subcontractor thereof or their respective employees that occurs while Seller is on a premises owned or controlled by Buyer. In no event shall Seller's obligations hereunder be limited to the extent of any insurance available to or provided by Seller or any subcontractor thereof. Seller expressly waives any immunity under industrial insurance, whether arising out of statute or other source, to the extent of the indemnity set forth in this paragraph (a).
- b. **Commercial General Liability.** If Seller or any subcontractor thereof will be performing work on Buyer's premises, Seller shall carry and maintain, and ensure that all subcontractors thereof carry and maintain, throughout the period when work is performed and until final acceptance by Buyer, Commercial General Liability insurance with available limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage combined. Such insurance shall contain coverage for all premises and operations, broad form property damage, employers' liability, contractual liability (including, without limitation, that specifically assumed under paragraph (a) herein) and goods and completed-operations insurance with limits of not less than one million dollars (\$1,000,000) per occurrence for a minimum of 24 months after final acceptance of the work by Buyer. Such insurance shall not be maintained on a per-project basis unless the respective Seller or subcontractor thereof does not have blanket coverage.
- c. **Automobile Liability.** If licensed vehicles will be used in connection with the performance of the work, Seller shall carry and maintain, and ensure that any subcontractor thereof who uses a licensed vehicle in connection with the

performance of the work carries and maintains, throughout the period when work is performed and until final acceptance by Buyer, Business Automobile Liability insurance covering all vehicles, whether owned, hired, rented, borrowed or otherwise, with available limits of not less than one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage.

- d. Workers' Compensation and Employers' Liability. Throughout the period when work is performed and until final acceptance by Buyer, Seller shall, and ensure that any subcontractor thereof shall, cover or maintain insurance in accordance with the applicable laws relating to Workers' Compensation (and Employers' Liability with limits not less than one million dollars (\$1,000,000) per incident) with respect to all of their respective employees working on or about Buyer's premises. If Buyer is required by any applicable law to pay any Workers' Compensation premiums with respect to an employee of Seller or any subcontractor, Seller shall reimburse Buyer for such payment.
- e. Certificates of Insurance. Prior to commencement of the work, Seller shall provide for Buyer's review and approval certificates of insurance reflecting full compliance with the requirements set forth in paragraphs (b) Commercial General Liability, (c) Automobile Liability and (d) Workers' Compensation. Such certificates shall be kept current and in compliance throughout the period when work is being performed and until final acceptance by Buyer, and shall provide for 30 days advance written notice to Buyer in the event of cancellation. Failure of Seller or any subcontractor thereof to furnish certificates of insurance, or to procure and maintain the insurance required herein or failure of Buyer to request such certificates, endorsements or other proof of coverage shall not constitute a waiver of Seller's or subcontractor's obligations hereunder.
- f. Self-Assumption. Any self-insured retention, deductibles and exclusions in coverage in the policies required under this article shall be assumed by, for the account of and at the sole risk of Seller or the subcontractor which provides the insurance and to the extent applicable shall be paid by such Seller or subcontractor. In no event shall the liability of Seller or any subcontractor thereof be limited to the extent of any of the minimum limits of insurance required herein.
- g. Protection of Property. Seller assumes, and shall ensure that all subcontractors thereof and their respective employees assume, the risk of loss or destruction of or damage to any property of such parties whether owned, hired, rented, borrowed or otherwise. Seller waives, and shall ensure that any subcontractor thereof and their respective employees waive, all rights of recovery against Buyer, its subsidiaries and their respective directors, officers, employees and agents for any such loss or destruction of or damage to any property of Seller, any subcontractor or their respective employees. At all times Seller shall, and ensure that any subcontractor thereof shall, use suitable precautions to prevent damage to Buyer's property. If any such property is damaged by the fault or negligence of Seller or any subcontractor thereof, Seller shall, at no cost to Buyer, promptly and equitably reimburse Buyer for such damage or repair or otherwise make good such property to Buyer's satisfaction. If Seller fails to do so, Buyer may do so and recover from Seller the cost thereof.
- h. Evidence of Citizenship or Immigrant Status. (i) Buyer may be required to obtain information concerning citizenship or immigrant status of Seller's personnel or Seller's subcontractor personnel entering the premises of Buyer. Consistent with all applicable local statutes and regulations including those provisions that provide such information when such provision is consented to by Seller's personnel or Seller's subcontractor personnel, Seller shall furnish such information before commencement of work and at any time thereafter before substituting or adding new personnel to work on Buyer's premises. If Seller determines that it may submit such information, it shall be certified by an authorized representative of Seller as being true and correct. Seller acknowledges that if it is unable to provide such information and certification, access to Buyer premises may be limited due to Buyer compliance with applicable U.S. export control statutes and regulation. (ii) With respect to Seller personnel or Seller's subcontractor personnel entering the premises of Buyer to perform work under this Contract, Seller specifically agrees that it is, and will remain, in compliance with the United States statute known as the Immigration Reform and Control Act of 1986, as amended, and will permit Buyer, upon reasonable notice, to inspect and audit Seller's records documenting such compliance with respect to said personnel to the extent allowable under all applicable local statutes and regulations. Seller subcontracts for work under this Contract shall suitably modify the parties in this paragraph and include the substance of this paragraph in subcontracts such that the subcontractor has the same obligation as Seller.

**42. ENTIRE AGREEMENT.** This Contract, together with all purchase orders, change orders attachments, exhibits, supplements, specifications, and other terms referenced in this Contract, contains the entire agreement of the Parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this Contract. Except as authorized herein, no amendment or modification of this Contract shall bind either Party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.